AARP Real Possibilities in Connecticut

Testimony of AARP Connecticut in **Support** of:
H.B. 5361 – An Act Limiting Changes to Prescription Drug Formularies and Lists of Covered Drugs
H.B. 5366 – An Act Concerning the Cost of Prescription Drugs
Insurance and Real Estate Committee, March 3, 2020
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Senator Lesser, Representative Scanlon, Ranking Members, and members of the Insurance and Real Estate Committee: Prescription drug prices in the United States are among the highest in the world, and for older adults and others on fixed incomes, increasing costs and changes to their prescription drug coverage can lead to difficult decisions and fatal outcomes. According to a recent AARP survey, 80% of older voters take at least one prescription medication on a regular basis, and 72% say they are concerned about the cost of their medications.[1]

At a time when many issues are polarizing, there is strong bipartisan support for policies that will lower prescription drug prices. 93% of older voters (regardless of party affiliation) favor proposals that will make it easier for generic drugs to come to market; 82% favor a cap on out-of-pocket costs for prescriptions; and 81% support allowing U.S. consumers to safely purchase prescription drugs from other countries.[2]

AARP Connecticut supports H.B. 5361, An Act Limiting Changes to Prescription Drug Formularies and Lists of Covered Drugs, and H.B. 5366, An Act Concerning the Cost of Prescription Drugs, because we believe that this legislation will address harmful business practices and help consumers access the medication they need to stay alive and healthy.

H.B. 5361 – An Act Limiting Changes to Prescription Drug Formularies and Lists of Covered Drugs

On average, older Americans take 4.5 prescription drugs per month,[3] and they rely on their health insurance to help them access the medications they need to improve or maintain their health. When individuals buy health insurance, they choose plans that make the most sense for their budgets and, more importantly, for their health needs. With few exceptions, when consumers enroll in a health plan, they are locked in until the termination of the plan year, and they do not have the ability to make changes to the terms of that plan. Unfortunately, the same rules do not apply to insurers. Under current Connecticut law, there is little to stop a health insurance provider from marketing a plan as providing expansive formulary coverage and then significantly changing the benefit package once an individual is enrolled in the plan. AARP believes that a health insurance provider should be held to the drug formulary it markets to

[1] https://www.aarp.org/content/dam/aarp/research/surveys_statistics/health/2019/likely-voters-prescription-drug-survey-fact-sheet.doi.10.26419-2Fres.00295.001.pdf
[2] *ibid*
[3] https://www.aarp.org/content/dam/aarp/ppi/2018/09/trends-in-retail-prices-of-brand-name-prescription-drugs-year-end-update.pdf

consumers, absent limited circumstances such as the availability of a new FDA-approved prescription drug or when prescription drugs are withdrawn for safety reasons.[4]

Several states have enacted a variation of this policy in recent years, either through legislation or administrative action. States with current policies related to nonmedical switching include: California, Illinois, Louisiana, Maine, Maryland, Nevada, New Mexico, and Texas. AARP Connecticut supports H.B. 5361 and thanks you for your consideration.

H.B. 5366 – An Act Concerning the Cost of Prescription Drugs

H.B. 5366 contains several proposals that would address high prescription drug costs. AARP CT would like to express our support for four of these proposals:

Cap on Out-of-Pocket Expenses

Section 1 of H.B. 5366 would place a monthly $250 out-of-pocket cost cap on prescription medications. If passed, Connecticut would join a growing number of states in placing some type of limit on what consumers have to pay each month for prescription medication. Some states, such as California and New Jersey, have placed caps on how much consumers can pay per month, per prescription. Delaware, Louisiana, Maryland, and DC have placed limits on what consumers in private health plans must pay for a 30-day supply of specialty tier drugs. Maine and Vermont have an annual out-of-pocket cap for prescription drug expenses. Finally, Colorado and Illinois have recently set caps on monthly insulin costs, and several other states are poised to do the same.

In an AARP survey of older voters, 39% of respondents did not fill a prescription provided by their doctor, and 71% of people who did not fill a prescription cited cost as the main reason.[5] Medication non-adherence leads to worse patient outcomes and places a significant cost burden on healthcare systems,[6] and high out-of-pocket costs is cited as the largest barrier to taking medication as prescribed. Out-of-pocket cost caps will relieve consumers' financial burdens, improve drug adherence, and, ultimately, save lives. Because of this, we support the out-of-pocket cost cap provision of H.B. 5366. We also, however, ask that efforts to limit out-of-pocket costs be implemented in conjunction with additional policy changes to lower prescription drug lists prices and increase competition within the pharmaceutical industry. Without these additional measures, out-of-pocket cost caps may ultimately lead to higher insurance premiums and cost-sharing for all consumers.

Canadian Prescription Drug Importation

AARP supports the safe importation of prescription drugs from licensed pharmacies and wholesalers operating in Canada and other countries with safety regulations as strong as those in the United States. H.B. 5366 would allow the Connecticut Department of Consumer Protection to create a process through which Canadian wholesalers could distribute prescription drugs to Connecticut pharmacies, and we strongly support this proposal.

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[4] We would support shortening the 90 day notice requirement in Sec. 1(c)(1)(A) for drugs that the FDA has potentially unsafe.

[5] https://www.aarp.org/content/dam/aarp/research/surveys_statistics/health/2019/likely-voters-prescription-drug-survey-fact-sheet.doi.10.26419-2Fres.00295.001.pdf

[6] https://bmjopen.bmj.com/content/bmjopen/8/1/e016982.full.pdf

A recent analysis from the House Ways and Means Committee found that "Americans pay on average nearly four times more for drugs than other countries – in some cases, 67 times more for the same drug."[7] That same analysis found that Canadian brand-drugs are about 28% of the cost of drugs sold in the United States. Another recent analysis from the White House Council of Economic Advisors found that, in Canada, the price of a set of top-selling drugs was 35% of what it is in the United States.[8]

Though not a complete solution to the problem of high drug prices, safe and legal importation will help put downward pressure on drug prices. Legislative fiscal analyses of state importation proposals have estimated significant savings for states and consumers. The size of savings and the number of consumers who will benefit will ultimately depend on how DCP chooses to structure Connecticut's program. State officials in Vermont have estimated a possible savings of $5 million annually based on a list of birth control, insulin, and pricey medications for HIV and multiple sclerosis that might be included in the program. Similarly, Florida projects that its program will save more than $150 million annually when fully operational.

Opponents of Canadian drug importation, many of whom represent the pharmaceutical industry or are funded by the industry, argue that importation is unsafe, vulnerable to black market interference, and has been unsuccessful in the past. However:

- **Most prescription drugs available in the United States were manufactured elsewhere.** In testimony submitted to the House Committee on Energy and Commerce in October of 2019, Dr. Jane Woodcock, Director of the Food and Drug Administration's Center for Drug Evaluation and Research, noted that, "in recent decades, drug manufacturing has gradually moved out of the United States. This is particularly true for manufacturers of active pharmaceutical ingredients (APIs), the actual drugs that are then formulated into tablets, capsules, injections, etc. As of August 2019, only 28 percent of the manufacturing facilities making APIs to supply the U.S. market were in our country. By contrast, the remaining 72 percent of the API manufacturers supplying the U.S. market were overseas, and 13 percent are in China."[9]

- **U.S. consumers, many of whom are desperate for less expensive medication, are already accessing foreign drug markets.** According to a Kaiser Health Tracking Poll, 8% of respondents said that they or a family member living in their household had purchased prescription drugs from Canada or another country in order to pay a lower price.[10] A 2017 Survey from Consumer Reports found that "an estimated 3.4 million people had ordered at least one medication online from outside the U.S. in the last 12 months in order to save money."[11] An overwhelming majority of these online pharmacies operate outside of U.S. state and federal law. A state-based Canadian

[7] https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/U.S.%20vs.%20International%20Prescription%20Drug%20Prices_0.pdf
[8] https://www.whitehouse.gov/wp-content/uploads/2020/02/Funding-the-Global-Benefits-to-Biopharmaceutical-Innovation.pdf?mod=article_inline
[9] https://www.fda.gov/news-events/congressional-testimony/safeguarding-pharmaceutical-supply-chains-global-economy-10302019
[10] http://files.kff.org/attachment/Kaiser-Health-Tracking-Poll-November-2016-Topline
[11] https://www.consumerreports.org/drug-prices/cheaper-meds-from-canada/

importation program would help consumers access lower-priced Canadian drugs in a safer and more regulated manner.

- **The Canadian importation program proposed in H.B. 5366 varies significantly from past state importation programs and includes additional safety measures.** Several states, including Minnesota and Illinois, participated in prescription drug importation programs between 2004 and 2010. Unlike the wholesale program proposed by H.B. 5366, these early programs were internet- and phone-based, and individual consumers placed orders for personal consumption with foreign pharmacies. These programs were operated in violation of federal law; the program created by DCP would be required to receive federal approval before beginning operations, and it would have safeguards such as sample testing that were not included in earlier importation programs.

Eliminating Pay-for-Delay Agreements

A pay-for-delay agreement is an arrangement between a brand name drug manufacturer and a competing generic drug manufacturer in which the generic drug manufacturer agrees to delay entry into the market of its generic drug in exchange for something of value from the brand name manufacturer, such as money or a promise of limited legal action. H.B. 5366 would require pharmaceutical manufacturers to disclose pay-for-delay agreements and require health carriers and pharmacy benefits managers to reduce the cost of brand name drugs subject to such agreements.

According to the Federal Trade Commission, pay-for-delay agreements have significantly postponed substantial consumers savings from lower generic drug prices, costing consumers $3.5 billion in higher costs each year.[12]

AARP supports closing loopholes that allow drug companies to block the entry into the market of lower-cost generics, and we are particularly supportive of strong enforcement mechanisms that effectively ban the use of pay-for-delay agreements. We do, however, have concerns about this section as drafted in H.B. 5366 and prefer the language of S.B. 251, which is nearly identical to a law recently signed by the Governor of California.

Limit mid-year changes to drug formularies

The language of this section is identical to H.B. 5361. Please see above for our comments in support of this proposal.

Thank you to the Insurance Committee for your ongoing interest in lowering prescription drug costs. AARP Connecticut appreciates the Committee's attention to this issue and hopes you will take action in support of H.B. 5361 and H.B. 5366.

[12] https://www.ftc.gov/sites/default/files/documents/reports/pay-delay-how-drug-company-pay-offs-cost-consumers-billions-federal-trade-commission-staff-study/100112payfordelayrpt.pdf